

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STEVEN M. BOTILLA

Plaintiff,

ORDER

v.
CITY OF MADISON POLICE DEPARTMENT,

08-cv-432-slc

Defendant.

Plaintiff Steven M. Botilla has filed three documents that I construe together as a response to defendant's answer to his complaint. The first document is titled "Petitioner's Response to Respondent's Answer" (Dkt. #9). The second document is titled "Motion to Strike Respondent's Defenses" (Dkt. #10). The third document is titled "Motion to Sanction Respondent" (Dkt. #11). In each of these documents, plaintiff takes issue with factual statements made in defendant's answer and argues that certain of defendants' affirmative defenses are not valid.

Fed. R. Civ. P. 12(b) permits a defendant to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendant. Although defendant has raised certain affirmative defenses in their answer they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to

defendants' answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to defendant's answer (Dkt. ## 9, 10 and 11) will be placed in the court's file but will not be considered.

Entered this 19th day of October, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge